THE EARLY HISTORY AND INFLUENCE OF THE OFFICE OF CORONER.[1]

THE early history of the office of coroner has never been satisfactorily investigated. The best text-books of legal and constitutional history begin the consideration of this subject with brief allusions to the origin of the coroner in 1194 and to the curtailment of his functions by *Magna Carta*, and then give various details taken from Bracton, Britton, Fleta and the Statute of 4 Edward I. But these four sources leave many questions unanswered concerning this institution in the second half of the thirteenth century, and no attempt has been made to trace its history before Bracton's time, or carefully to consider its origin. The subject is worth studying, not merely because these gaps ought to be filled up, but also because its investigation may throw some new light upon the early history of trial by jury and of parliamentary representation.

The origin of the coroner's office is usually ascribed to the Articles of the Eyre of 1194.[2] But there is evidence which shows that coroners both of boroughs and of counties existed before this date. In the thirteenth or fourteenth century the citizens of Norwich claimed that they had appointed such officers since the reign of Stephen; but a hostile contemporary

[1] The following contractions are used in the footnotes of this essay:

Bracton. Bracton's De Legibus, edition of the Rolls Series, 1878–83.

Britton. Edited by F. M. Nichols, 1865.

Northumb. Rolls. Three early Assize Rolls of Northumberland. Surtees Society, 1891.

Pl. of Gl. Pleas of the Crown for the County of Gloucester. Edited by F. W. Maitland, 1884.

Rot. Chart. Charter Rolls. Record Commission, 1837.

Rot. Claus. Close Rolls. Record Commission, 1833–44.

Salt Soc. Historical Collections of Staffordshire. Wm. Salt Archæol. Society.

Sel. Pleas. Select Pleas of the Crown. Selden Society, 1888.

Statutes. Statutes of the Realm. Record Commission.

[2] "Preterea in quolibet comitatu eligantur tres milites et unus clericus custodes placitorum coronæ." Stubbs, Select Charters, 260. Stubbs, Maitland, Gneist, Bigelow, Stephen, Palgrave and Reeves all regard this as the origin of the office.

chronicler denies this, and asserts that Norwich did not have this privilege "for a hundred years and more after the Conquest."[1] Henry I granted to the citizens of London "unum justitiarium quemcunque vel qualem voluerint de seipsis, ad custodiendum placita coronæ meæ et eadem placitandum."[2] Henry II, in 1181, allowed the burgesses of Coventry to elect their own "justitiarius," but the charter does not mention crown pleas.[3] In 1189 the burgesses of Colchester received a grant from Richard I (afterwards confirmed by Henry III), "quod ipsi ponant de seipsis ballivos quoscumque voluerint, et justit[iarios] ad servandum placita coronæ nostræ et ad placitandum eadem placita infra burgum suum."[4] That the charters of Henry I and Richard I to London and Colchester refer to coroners is evident from a comparison of these documents with chapter 20 of the Articles of the Eyre of 1194, with chapter 24 of *Magna Carta*, and especially with the grants of municipal coroners in the reign of John. In John's charters the burgesses are allowed to elect two reeves (*præpositi*), and also four discreet men of the town "ad custodiendum placita coronæ et alia quæ ad nos et coronam nostram pertinent in eadem civitate, et ad videndum quod præpositi illius civitatis juste et legitime tractent tam pauperes quam divites."[5]

[1] Monasticon Anglicanum, IV, 14. The narration is taken from the register of Binham. The same claim of the citizens is entered in the civic records of Norwich. *Archæological Journal*, vol. 46, p. 305.

[2] Rymer, Fœdera, I, 11; Stubbs, Sel. Chart, 108. In the thirteenth century the mayor was *ex officio* coroner and chamberlain, and with him were associated the sheriffs of London. Riley, Memorials, 3; Liber Albus, 83–86, 93, 96, 112; Liber Custumarum, 296; Loftie, London, 29. With them the aldermen of the various wards co-operated. Liber Albus, 52; Liber de Antiquis Legibus, 51. It is possible that already in the time of Henry I the chief magistrate (portreeve) acted as "justitiarius," or coroner. See Norton, London, 60, 275.

[3] Dugdale, Warwickshire, 137; Merewether and Stephens, Boroughs, 338.

[4] Madox, Firma Burgi, 28.

[5] Rot. Chart., 46 (*bis*), 56, 57, 65, 142. In some of the Cinque Ports the coroner, during the thirteenth and fourteenth centuries, seems to have been called a judge. See Lyon, Dover, I, 303. That the "custodes" of John's charters were coroners cannot be doubted. See Gross, Gild Merchant, II, 116, 117. During the first half of Henry III's reign the names "custodes placitorum coronæ" and "coronatores" continued to be used interchangeably. Sel. Pleas, 98, *et pass.*; Bracton, II, 504. The term "coronarii" also was employed in the reign of John. Sel. Pleas, 68–70; Spelman, Gloss., *s.v.* "Furca"; Madox, Exchequer, I, 336; Rot. Chart., 129.

The evidence concerning the existence of county coroners before 1194 is almost equally conclusive, though confined to a single extract from the Plea Rolls of the King's Court.[1] In November, 1194, Geoffry Fitz-Peter, William de Stuttville and their colleagues, itinerant justices in Lincolnshire, "recorded," or reported, before the justices at Westminster that Hugh de Severbi had accused Alured de Glentham, as principal, and a certain Jordan, as accessory, of killing his brother. Hugh stated that after the commission of the crime the accused had been placed in the custody of the bailiffs of Gerard de Camville, sheriff of Lincolnshire. The coroners (*milites custodientes placita coronæ*), having been called to Westminster, say that at the first county court after the homicide Hugh accused Jordan as principal and Alured as accessory. The sheriff and men of the county confirm the testimony of the coroners. We must try to determine in what year the crime and the session of the county court took place, and when the case was laid before the itinerant justices. Our best clue is the reference to Gerard de Camville, who was sheriff of Lincolnshire from 1189 to 1194, with the exception of a few weeks in 1191.[2] In March, 1194, he was deposed from office by Richard I, and in the following month charges of treason were brought against him.[3] It is wholly improbable that he was restored to office during this reign, for he had been an ardent supporter of John's conspiracy against the crown. Hence Hugh de Severbi must have made his accusation in the county court in presence of the coroners before March 31, 1194, and hence before September, 1194, in which latter month the Articles of the Eyre were issued. It is probable, though not certain, that the accusation was made in 1189 or 1190; for in 1 Richard I both Geoffry Fitz-Peter and William de Stuttville acted as itinerant justices,[4] and they may have tried the case of Hugh *vs.* Alured and Jordan in the eyre of that year.

[1] Rotuli Curiæ Regis (ed. Palgrave), I, 50, 51.

[2] Hoveden (ed. Stubbs), III, pp. xxix, lvi, 134, 137; Foss, Judges, II, 48. He was made sheriff by Richard soon after the latter's coronation.

[3] Hoveden, III, 241–243.

[4] Foss, Judges, I, 335.

On the other hand, coroners are not mentioned in Glanvill or in the printed Pipe Rolls of 2–15 Henry II. The silence of the former is more eloquent than that of the latter, but it may be due to the fact that the coroner's functions were not yet as extensive as they became in the next century, and hence that Glanvill, in his meagre account of criminal procedure, had no occasion to refer to the office. Even after 1194 such records as the *Rotuli Curiæ Regis* rarely mention coroners during the reign of Richard I.[1]

Some writers have ascribed their origin to the Anglo-Saxon period.[2] This view is improbable because the power of the royal judicature and the idea of crown pleas were not yet fully developed under the Anglo-Saxon kings. As the jurisdiction of the *Curia Regis* gradually increased and that of the local public courts diminished in the century following the Norman Conquest, the king's peace was extended, the category of crown pleas was enlarged,[3] and hence new agents were needed to see that criminals were brought to trial before the itinerant justices. The coroner was, in fact, an important concomitant of the eyre system; the latter needed the active co-operation of the former. Both existed primarily for the king's profit,[4] both were useful agents of a highly centralized government. The development of coroners may thus have been contemporary with that of the itinerant justices; both offices, perhaps, were tentatively employed under Henry I, fell in abeyance under Stephen, and were firmly established under Henry II. Moreover,

[1] The reference to coroners in the case of Hugh de Severbi is, in fact, the only one that I can find in the printed Plea Rolls of Richard's reign.

[2] Forsyth, Trial by Jury, 225; Coke, Second Institute, 31, who cites Mirror, ch. 1, § 3; Blackstone (ed. Sharswood), IV, 413. The evidence of the Mirror is as unreliable as that of the rhyming charter of Athelstan to the monks of Beverley, which contains the line: "Nan oyer coroner have ye might." Monasticon Anglic., II, 130; Birch, Cartularium Saxonicum, II, 322.

[3] Stubbs, Const. Hist., §§ 72, 73, 128, 163; Bigelow, Procedure, 75–85; Pollock, Oxford Lectures, 86; Maitland, Manor. Pleas, pp. liii, liv.

[4] The coroner was expected to seek diligently for the forfeited chattels of felons, for deodands, wreck and treasure-trove. See Britton, I, pp. xxxi, 11–18; Statute 4 Edw. I; Abbreviatio Originalium, I, 18; Placita de quo Warranto, 114. *Cf.* Gneist, Self-government, 183, 184.

Henry II aimed to curtail the authority of the sheriffs.[1] Some of their functions ultimately passed to the coroners, and the latter acted as a check on the former.[2] The rise of the coroner seems to imply a corresponding depression of the sheriff; hence the establishment of the new office may have been the result of Henry II's policy of reducing the power of the sheriffs, consolidating the king's peace and centring the administration of justice in the itinerant justices and the *Curia Regis*. Whether this hypothesis is tenable or not, it is evident that chapter 20 of the Articles of 1194 is merely a declaratory act, referring to an institution which was already in existence.

In the reigns of Henry III and Edward I there were generally four coroners in each county,[3] but in some cases only two.[4] They were elected in the county court "with the assent of the whole county." The writ *de coronatore eligendo* was the same in the first quarter of the thirteenth century as under Edward I and his successors. The newly elected coroner took his oath of office (*ad custodienda ea quæ pertinent ad coronam*) before the sheriff, who afterwards sent his name to the king.[5] The main qualifications for the office throughout the thirteenth century were knighthood and residence in the same county.[6] Its tenure

[1] Stubbs, Const. Hist., § 163.

[2] See below, p. 664.

[3] Pl. of Gl., 97; Rot. Claus., I, 402, 622, 648 (*cf. ibid.*, I, 463, 506, II, 91, 105, 119, 126); Bracton, II, 430; Salt Soc., IV, 73, 208, 215, V, 121, VI, pt. i, 256; Northumb. Rolls, 372 (*cf. ibid.*, 68, where only three coroners are mentioned).

[4] Rot. Claus., II, 67 (Devon); Abbrev. Placit., 55 (Leicester); *cf.* Bracton, II, 430.

[5] For the mode of election, oath, *etc.*, see Rot. Claus., I, 366, 368, 402, 409, 414, 419 (*bis*), 463, 506, 560, 622, 648, II, 67, 91, 105, 119, 121, 126; Cooper, Records, I, 421; Britton, I, 8. In a few cases the king seems to have appointed the coroner. Rot. Claus., I, 560. For the writ of election in the reign of Edw. I and later, see Statutes, I, 62; Reg. Brevium, 177; Fitzherbert, Natura Brevium, 163.

[6] Henry III generally orders the sheriff to cause knights to be elected. See the references to Rot. Claus. in the preceding note. *Cf.* Statutes, I, 2, 29. As to the qualification of residence, see Rot. Claus., I, 419. The "*clericus*" of Richard I's enactment (Stubbs, Sel. Ch., 260) may, perhaps, have been simply a clerk or scribe of the knights. Such assistants are mentioned under Henry III and Edw. I. Rot. Hund., I, 112, 130, 198; Plac. quo War., 309, 421; Salt Soc., IV, 215; Britton, I, 54; Fleta, I, ch. 18.

was for life or during good behavior.[1] Coroners enjoyed certain privileges, such as exemption from ordinary jury service and from attendance at the hundred and county courts outside of their own shires.[2]

Many boroughs had their own coroners, who varied in number from one to four; in the reign of John there were usually four, later generally two.[3] They were elected by the civic community, or whole body of burgesses,[4] and were commonly sworn into office in the shire court by the sheriff or justices itinerant.[5] Their tenure was the same as that of county coroners.[6] Any burgher was eligible to the office.[7] The privilege of having such officers was a stage in the process of growth by which the

[1] In the Close Rolls the new election is often said to be due to death, illness or inefficiency. See also Northumb. Rolls, 68; Eyton, Shrop., IV, 118. In 1221 a coroner paid a fine to be removed from his office. Pl. of Gl., 109.

[2] "Coronatores quieti debent esse de assisis et sectis comitatus et hundredorum in aliis comitatibus quam in illis in quibus fuerint coronatores." Rot. Claus., I, 423. "Nullus coronator poni debet in assisis, juratis vel recognitionibus, quamdiu fuerit coronator." *Ibid.*, II, 191.

[3] Four are mentioned in Rot. Chart., 46 (*bis*), 56, 57, 65; Hartshorne, Northampton, 35, 42; Madox, Firma Burgi, 133; Pl. of Gl., 117; Merewether and Stephens, 392. Two are referred to in Sel. Pleas, 98; Merewether and Stephens, 466; Northumb. Rolls, 367; Hedges, Wallingford, I, 359–62; Chartæ Hiberniæ, 20; Eyton, Shrop., XI, 137; English Gilds, 350; Swinden, Yarm., 262; Charters of Salisbury (Rolls Series), 342; Plac. quo War., 18. At Oxford in 1285 there were four, and a few years later only two; there were also four for the suburbs. Rogers, Documents, 147–168, 194, 217–223. At Shrewsbury, under John, the number was changed from four to two. Rot. Chart., 46, 142. At Ipswich a similar change seems to have taken place in the reign of Edw. I or Edw. II. Wodderspoon, Ipsw., 86; Bacon, Annals, 13, 16, 41, 47. In some boroughs there appears to have been only one coroner. Northumb. Rolls, 331; Salt Soc., IV, 73; Plac. quo War., 159. There were boroughs without a separate coroner. A special grant from the king was necessary for the exercise of this privilege. Plac. quo War., 18, 138, 629.

[4] Gross, Gild Merch., II, 116, 117; Rot. Chart., 46 (*bis*), 56, 57, 65, 142; Madox, Firma Burgi, 133.

[5] Rot. Claus., I, 364; Chartæ Hiberniæ, 20; Plac. quo War., 159; English Gilds, 350. The coroners of Newcastle, according to Henry III's charter, were to take the oath before the mayor and bailiffs in full [borough] court. Brand, Newc., II, 141. In the year 1200 the coroners of Ipswich took the oath before the town community in the borough. Gross, Gild Merch., II, 116, 117.

[6] Hist. MSS. Com., VI, 583; Rogers, Documents, 147; Plac. quo War., 159; Chartæ Hibern., 20; Rot. Chart., 45, 46.

[7] The early borough charters refer to "legales homines de burgo," not to "milites." In Rot. Claus., I, 364, "milites" are mentioned, but this looks like a slip of the scribe's pen. *Cf.* Rot. Chart., 56.

borough administration was separated from that of the county. In manors which had their own coroners, the office was probably not elective, but was filled and held at the will of the lord.[1]

Returning to the county coroners, to whom we must mainly confine our attention, let us consider their functions. The main point to be emphasized in this connection is their wide sphere of activity, in both the first and the second half of the thirteenth century. Their duties were not confined to cases of sudden or violent death, but extended to a wide range of criminal matters and even to civil pleas. They were the principal agents in bringing all sorts of criminals to justice. They held inquests in cases of sudden or unnatural death, serious bodily injury, burglary, arson, rape, prison-breaking and concealment of treasure-trove or wreck. Englishry was presented, when necessary, at these inquests.[2] Persons declared guilty by the jury, and those who were present when the crime was committed or when the accident happened, as well as the finders of the body and sometimes the nearest neighbors,[3] were all either arrested or attached to appear at the trial before the itinerant justices. The coroners also received the declarations of approvers, and heard "appeals," or criminal accusations of one person against another, the final trial being reserved for the eyre. They kept, moreover, a record of outlawries, and received the confession and the abjuration oath of felons who had fled to sanctuary.[4] These various functions are mentioned in the reigns of John

[1] Plac. quo War., 24, 112, 222; Memorials of Ripon, I, 68. *Cf.* Statute 28 Edw. III, c. 6; Hale, Pleas of Crown, II, 53. But in some cases even seignorial coroners were elected. See Furness Coucher Book, 159, 166 (Edw. III).

[2] For such presentments of Englishry before the coroner, see Bracton, II, 391; Britton, I, 16, 17; Fleta, I, ch. 30; Statutes, I, 58; Pl. of Gl., 57.

[3] The finders of a body were not attached if the deceased had received the rites of the church before death, perhaps because he would then have had an opportunity to exonerate them. This explains the words "habuit jura ecclesiastica" in the coroner's rolls. See Rogers, Documents, 171–174; Year Books, 30–31 Edw. I, 522. As to the attachment of neighbors, see Riley, Memorials of London, 4–20; Norfolk Archæology, II, 263; *cf.* Hist. MSS. Com., IX, pt. i, 226.

[4] The old oath used at Colchester is printed in Norfolk Archæology, VII, 266, and in Harrod's Records of Colch., 32.

and Henry III,[1] are clearly set forth in Bracton, Britton, Fleta, the Statute of 4 Edward I, the *Statutum Walliæ* (1284) and the *Statutum Exoniæ*,[2] and are described in detail in the ordinary text-books of legal history.

To these duties, which by themselves amply testify to the importance of the office, others are to be added concerning which the information in the above-mentioned sources is quite meagre. We may infer from the early town charters and from *Magna Carta*, chapter 24, that before 1215 these officers tried criminal pleas (*placita coronæ*); and even after that date they passed judgment on felons caught in the act.[3] Moreover, before and after 1215 they often conducted jury trials in ordinary civil pleas, either taking the place of the sheriff or, more commonly, associated with him.[4] In the county court their position and activity were not much inferior to his.[5] They also, with or without the sheriff, sometimes convened the hundred for judicial business, and even held the sheriff's tourn.[6] They were, further-

[1] For the coroner's functions in the reigns of John and Henry III, see Rot. Curiæ Regis, I, 51, 418; Sel. Pleas, 3, 9–19, 28, 33, 45, 63–70, 84, 88, 100–117; Pl. of Gl., 4, 15, 20–47, 55–78, 94–115; Rot. Claus., I, 432, 617, 641, II, 28, 31, 51; Bracton, II, 280–90, 388–90, 394–96, 424–32, 510, 522; Bracton's Note Book, II, 117, 402, 650, III, 131; Statutes, I, 11, 25; Stubbs, Sel. Ch., 384–85; Northumb. Rolls, 71–86, 96–107, 117–125; Salt Soc., III, 91, 95, IV, 71, 73, 214, 215; Liber Albus, 83–96, 112; Norfolk Archæol., II, 253–79. For the reign of Edw. I, see Britton, I, 8–18, 54, 62–67, 79, 110–112, 134, 135; Fleta, I, ch. 25; Statutes, I, 28, 29, 40, 41, 56–59, 210–12; Year Books, 30–31 Edw. I, 496–544; Plac. quo War., 170, 222, 309, 603; Northumb. Rolls, 315–367; Salt Soc., VI, pt. i, 127, 257–275; Monast. Anglic., II, 447; Memorials of Ripon, I, 68–71; Rogers, Documents, 150–177, 195–219; Riley, Memorials, 3–20; Rot. Hund., I, 56, 313, II, 187, 308, 313. These references show that the Statute of 4 Edw. I is a declaratory act, and that it does not mention all the important functions of the coroner.

[2] This undated statute seems to belong to the reign of Edw. I; it appears to have been used by Fleta, I, ch. 18.

[3] Britton, I, 37, 56.

[4] Bracton's Note Book, II, 277, 389, 420, 425, 452, 466, 516, 571, 572, 627, 675, 682, III, 151, 155, 228, 264, 473; Statutes, I, 2, 23; Salt Soc., IV, 84, 95, 97; Monast. Anglic., VI, 2; Memorials of Ripon, I, 56; Abbrev. Placit., 260; Records of Nottingham, I, 47. *Cf.* Northumb. Rolls, 195; Bracton's Note Book, III, 57, 489; Salt Soc., VI, pt. i, 30; Liber Albus, 187.

[5] Britton, I, 54, 110–12, 135; Bracton, II, 540, 542; Stubbs, Sel. Ch., 362; Statutes, I, 56; Pl. of Gl., 102; Northumb. Rolls, 105, 117, 315; Sel. Pleas, 70; Maitland, Court Baron, 89, 90. *Cf.* Palgrave, Merchant and Friar, 54.

[6] Sel. Pleas, 68–70, 117; Northumb. Rolls, 164; Furness Coucher Book, 135–136; Plac. quo War., 371. *Cf. ibid.*, 138, 629; Shirley, Letters, I, 451.

more, occasionally employed by the crown to transact purely ministerial or administrative business, assisting or superseding the sheriff.[1] In default ot the sheriff, or if he was a party in a suit, royal writs were regularly executed by the coroners.[2]

Indeed, throughout the thirteenth century, the latter acted as a check on the former.[3] In criminal matters their rolls had more authority than his.[4] The elected officers of the county thus gained power at the expense of the appointed agent of the king, especially in connection with the administration of justice. The coroner, the representative not merely of the king but also of the people, owing his position to the suffrage of the community and belonging to that community, was less liable to be oppressive and obnoxious to the people than the sheriff, who often bought his appointment from the crown, frequently lived in some other county, and generally regarded his office as an instrument of private gain. Hence, in the Hundred Rolls of Edward I's reign, serious complaints against the *coronatores* on account of bribery and oppression are less numerous than those against the *vicecomites*.[5] By transferring power from the latter to the former and by placing the coroner's election in the hands of the people, the king diminished their grievances and at the same time made them responsible for the proper exercise of this office.[6] We must, however, be careful not to exaggerate the coroner's function as controller of the chief officer of the

[1] Rot. Claus., I, 437 (*bis*), 622, 648; Plac. quo War., 228, 792.

[2] Bracton, I, 596; Britton, II, 71; Bracton's Note Book, III, 55, 57, 489; Plac. quo War., 685; Abbrev. Plac., 260, 294, 312, 314; Madox, Exch., II, 238; Memorials of Ripon, I, 56. *Cf.* Year Books, 14 Edw. III, 36, 238, 307.

[3] Pl. of Gl., p. xxxiii; Salt Soc., VI, pt. i, 30; Stubbs, Const. Hist., §§ 150, 163, 206, and Sel. Ch., 291.

[4] Bracton, II, 430. The Statute of Westminster, I, c. 10, regarding the rolls of the coroners and of the sheriff, is merely declaratory of what existed under John and Henry III. See Sel. Pleas, 28; Salt Soc., III, 91.

[5] *Cf.* Northumb. Rolls, p. xx; Riess, Wahlrecht, 3–5; Prothero, Simon de Montfort, 162, 300; Bémont, Simon de Montfort, 132–134.

[6] A record of 6 Edw. II, describing the opening of the eyre, states that concerning coroners elected by the county who are dead and have no property, all the said county is charged to answer before the justices for their official acts during their term of office. Year Books, 30–31 Edw. I, p. lvii. In 14 Edw. III a county, "ut elector et superior," was held responsible for the fine of a coroner who had no property. Coke, Second Inst., 175.

shire; for both offices might be held by the same person[1] (though probably this did not often happen), and, in the reign of Edward I, Britton seems to have regarded the sheriff as a check on the coroner, or the two as counter-checks on each other.[2]

In boroughs the relation of the coroners to the chief municipal officer or officers (reeve, mayor or bailiffs) was similar to that of the county coroners to the sheriff. In the early borough charters the *custodes placitorum coronæ* are said to be elected "ad videndum quod præpositi juste et legitime tractent tam pauperes quam divites."[3] Hence the former were generally associated with the latter in the hearing of criminal pleas and sometimes in the administrative work of the borough.[4] Coroner's inquests were held with or without the chief civic officer.[5] In a few boroughs the two offices were united.[6]

Next, the functions of the coroner in the eyre are to be noted. Here he is a very prominent figure — an important link between the itinerant justices and local administration, and hence between the crown and the people. Whether he was coroner of the county or of a franchised district, his presence at the eyre was almost indispensable, and was enforced under severe penalties.[7] At the opening of the eyre the justices received all coroners' rolls in use since the last circuit, and sealed them, probably to prevent alterations in the records during the proceedings of the

[1] Northumb. Rolls, 68; Salt Soc., IV, 71.

[2] "Viscounte . . . soit soen countreroullour en tut soen office." Britton, I, 17. The construction of the sentence is somewhat obscure; perhaps Britton meant to say that the coroner was the controller of the sheriff. *Cf.* Statutes, I, 29, 56.

[3] Rot. Chart., 46 (*bis*), 56, 57, 65, 142.

[4] Records of Nottingham, I, 66; Gross, Gild Merch., II, 116–122; Bacon, Annals of Ipsw., 18, 28; Domesday of Ipsw., 20, 50–53, 96–99; Plac. quo War., 18; Archæol. Journal, XLVI, 314; Swinden, Yarm., 261; *cf.* Liber Albus, 187.

[5] Norfolk Archæology, II, 259; Winch. vol. of the Brit. Archæol. Assoc., 81; Riley, Memorials, 3–20; Hedges, Wallingford, I, 359–362; Hist. MSS. Com., VI, 505, 583–584; Rogers, Documents, 150–176.

[6] Gilbert, Dublin Records, I, 155, 226; above, p. 657, n. 2. This seems to have been the case in all the Cinque Ports. See Lyon, Dover, II, 269, 303, 314, 347, 371.

[7] "As to the coroners who did not come, the sheriff was ordered to go to their houses and turn out their wives and children, and to take their lands into the king's hands until they should come." Year Books, 30–31 Edw. I, 75–77; *cf. ibid.*, pp. lvi, lvii.

court.[1] In the trial of criminal pleas the itinerant justices often had recourse to the testimony of the coroners or of their rolls.[2] These records, which had great authority,[3] supplemented, checked or corrected the presentments of the hundred juries,[4] and thus tended to insure the trial of all felons. They also indicated defects in the administration of justice in shire, hundred and township, in connection with appeals of felony, outlawries, the custody of prisoners, hue and cry, *etc.*[5] Then, too, the judges, during the sessions of the eyre, made use of the coroners in connection with civil pleas, ordering them to see whether the essoinees were acting in good faith,[6] to summon parties in a suit, to empanel a jury for the trial of some issue or for the making of a record of proceedings in the county court.[7]

The coroners bound together central and local government in still another way. They linked the manorial to the royal jurisdiction, for their presence was necessary in privileged baronial courts when felonies were attached or tried. When a criminal was caught red-handed, or with the mainour, in the district of a

[1] Britton, I, 23; Year Books, 30–31 Edw. I, pp. lvi, lvii, 75; Liber Cust., 295, 296; Rogers, Documents, 183; Plac. quo War., 25, 309; *cf.* Fleta, I, chap. 18.

[2] Sel. Pleas, 3, 9–19, 28, 33, 84, 88, 103, 107, 117; Pl. of Gl., 7, 11, 20–28, 32, 39, 55, 57, 62, 78, 94–102, 109, 115; Northumb. Rolls, 70, 78, 79, 105, 117, 315, 346; Salt Soc., III, 91, 95, VI, pt. i, 261–263, 274; Bracton's Note Book, II, 117, III, 407, 678; Year Books, 30–31 Edw. I, 496, 518; Rogers, Documents, 201, 204. The rolls are first mentioned early in John's reign.

[3] For their authority and value, see Bracton, II, 427–430; Britton, I, 18, 111, 112, 135; Plac. quo War., 18; Year Books, 30–31 Edw. I, 503, 543, 544; Sel. Pleas, 28; Norfolk Archæology, II, 259, 260; *cf.* Staunford, Plees del Coron, 51, 52. The coroners were severely punished for alterations or errors in their rolls. Pl. of Gl., 62; Salt Soc., IV, 215; Britton, I, 14; Fleta, I, chap. 25; Plac. quo War., 421. Many old rolls of county coroners (Edw. I, *etc.*) are preserved in the Public Record Office. See Scargill-Bird, Guide to Documents, 64. Some of the early rolls of borough coroners (Henry III–Edw. III) are still extant in Norwich, London, Leicester, Wallingford, Oxford, Faversham, Ipswich, *etc.* Hist. MSS. Com., I, 104, III, 318, VI, 508, 509, 582, 584, VIII, pt. i, 411, IX, pt. i, 226, 227. Extracts from those of Norwich, London and Oxford (Hen. III–Edw. II) have been printed in Norfolk Archæology, II, 253–279; Riley, Memorials, 3–20; Rogers, Documents, 150, 174.

[4] Pl. of Gl., 7, 29, 55, 57, 96, 101; Sel. Pleas, 28, 33. The jury also acted as a check on the coroners. Pl. of Gl., 62; Northumb. Rolls, 313; Salt Soc., IV, 73; Rogers, Documents, 202, 203.

[5] See above, n. 2.

[6] Bracton, V, 317; Bracton's Note Book, III, 55.

[7] See above, p. 663, n. 4; p. 664, n. 2; and *cf.* Abbrev. Placit., 55.

seigneur who had infangthef, the penalty of death could be lawfully inflicted only in the presence of a coroner.[1] Some manors had coroners of their own,[2] but this privilege does not seem to have been very common in the thirteenth century. The crown was seemingly more reluctant to grant this right to manors than to boroughs, probably because the lords were more likely to withhold the forfeited chattels of felons and in general to usurp the royal prerogatives.[3] Manorial coroners were responsible to no body of electors, but, in the first instance, only to the seigneur, whom they would naturally serve more faithfully than the crown. Hence the king preferred to have the county coroners act as a medium between him and the manors. It was their function to protect the royal rights and profits against the lords, lay and spiritual, in all matters relating to crown pleas. They could enter franchised places from which the sheriff was ordinarily excluded[4] — a fact which confirms the conclusion that they gained power at his expense. Thus the coroners, like the itinerant justices, tended to bring or keep the seignorial jurisdictions under royal control, and to check the growth of feudalism.

Having indicated the functions and importance of this institution in the thirteenth century, let us now examine more carefully the coroner's jury and the mode of his election, both of which exerted some influence upon other institutions.

"Inquest" (*inquisitio*) is an interesting survival of a word which is associated with the birth of a new system of procedure,

[1] Plac. quo War., 121, 125, 148, 170, 217, 309, 334, 335, 603, 759; Sel. Pleas, 84, 117; Furness Coucher Book, 133; Spelman, Gloss., *s.v.* "Furca"; Monast. Anglic., II, 447; Britton, I, 18, 37, 56; Year Books, 30–31 Edw. I, 502; Salt Soc., IV, 214. *Cf.* Bracton, II, 540–542.

[2] Plac. quo War., 24, 25, 112–114, 197, 222–224, 334, 335, 593, 604, 778 (*cf. ibid.*, 73, 74, 305, 332, 340, 421, 675); Monast. Anglic., II, 130; Memorials of Ripon, I, 52, 57, 68, 69; Furness Coucher Book, 157–159, 165, 166; Blomefield, Norfolk, III, 49, 52; Gross, Gild Merch., II, 48, 365; Rot. Hund., I, 119, 120, II, 169, 280.

[3] *Cf.* Plac. quo War., 114, where complaint is made that the coroners of a lord and those of his ancestors had concealed such chattels. The king's distrust of manorial coroners is also shown by the frequent inquiry whether they had taken the oath of office. See *ibid.*, 24, 113, 222.

[4] Plac. quo War., 121, 125, 148, 603; Furness Coucher Book, 133; Rot. Chart., 129; Bracton's Note Book, II, 55. *Cf.* Bracton, II, 540, 542; Maitland, Manor. Pleas, p. xxvi.

and which in mediæval England was a common generic term applicable to all forms of the jury, whether used for judicial or administrative purposes. The composition of the coroner's inquest jury in the thirteenth century varied somewhat in different localities and at different times. Most commonly it seems to have consisted of a representation from "the four neighboring townships (*villatæ*)," *i.e.* that in which the body was found or in which the crime was committed, and the three nearest vills.[1] The number of persons from each *villata* was indeterminate, varying according to circumstances; the coroner probably summoned as many as he deemed sufficient for the inquest.[2] At Oxford in 1297–1307 from twenty-two to thirty persons served on the jury — an average of about six representatives from each parish.[3] In the same reign juries of twelve, thirteen, fifteen and twenty-one are mentioned at Wallingford.[4] Sometimes the hundred or borough, as well as the townships or parishes, was represented.[5]

The activity of the four townships was not confined to such jury service. Other communal duties and responsibilities were often imposed upon them collectively, in connection with criminal administration. They were expected to join in the hue and

[1] Stubbs, Sel. Ch., 384, 385; Salt Soc., IV, 211–214; Rogers, Doc., 150–174; Northumb. Rolls, 93–100, 107, 110, 111, 314, 318, 320; Harrod, Colch. Records, 33; Rot. Hund., II, 308; Norfolk Archæol., II, 260–267; Maitland, Court Baron, 90; Hist. MSS. Com., VI, 583. *Cf. ibid.*, IX, pt. i, 226; Bracton, II, 504; Year Books, 30–31 Edw. I, 525, 545; Shirley, Letters, I, 451; Statutes, I, 56. Bracton (II, 281) and the Statute of 4 Edw. I say that the jurors were to be taken from four, five or six townships; Britton, I, 9, and Fleta, I, ch. 25, say from four or more. Five are referred to in Statutes, I, 56, 58; *cf.* Rot. Claus., II, 51. In 1272–1278, generally two or three wards of London are represented on the jury. Riley, Memorials, 3–20.

[2] The Provisions of Westminster, ch. 24, require the presence of a number sufficient to make the inquest. *Cf.* Britton, I, 10; Shirley, Letters, I, 451. The Statute of Marlborough, ch. 24, and the Statutum Walliæ, ch. 5, state that all of twelve years of age or older ought to appear in inquests concerning death, unless they are excused.

[3] Rogers, Doc., 150–168.

[4] Hist. MSS. Com., VI, 583. *Cf. ibid.*, IX, pt. i, 226; Rot. Claus., II, 51 (the reeve and four men from each of five vills); Bracton, II, 504 (reeve and six men from each of four vills). In 1305 the king ordered inquiry to be made whether coroners put poor people on juries and spared the rich. Archæologia, XL, 96, 97, 103.

[5] Sel. Pleas, 23, 117; Bracton, II, 244. *Cf.* Hist. MSS. Com., IX, pt. i, 226; Plac. quo War., 138 (*bis*), 629.

cry, to watch a culprit who had fled to sanctuary, to take charge of a felon's land and chattels, to appraise the value of his property and of deodands, and to hold the body of a person slain or killed by accident until the coming of the coroner.[1] They also, singly or collectively, presented felonies in the hundred and shire courts.[2]

These details throw some light upon the relation of the four townships to the twelve *juratores* of the hundred, who at the eyre presented and also tried persons accused of crime.[3] This relation has been pointed out by Professor Maitland in his very suggestive introduction to the Pleas of Gloucester.[4] He rightly remarks that "the history of the petty jury is still in MS." He is inclined to seek its germ in the *quatuor villatæ*;[5] their representatives "became a second body of witnesses who could traverse the testimony of the hundred jury."

This theory seems plausible, but it should perhaps be slightly modified by connecting the origin of the traverse or trial jury with a specific class of cases, namely, appeals of felony. Before

[1] Northumb. Rolls, 98, 100, 107, 110, 115, 119, 317, 318, 320, 341, 345; Sel. Pleas, 86; Statutes, I, 40, 41, 58, 59; Britton, I, 11, 16, 17, 45; Norfolk Archæol., VII, 266; Pl. of Gl., 41; Rot. Hund., II, 306. *Cf.* Bracton, II, 284; Year Books, 30–31 Edw. I, 525, 545; *Revue Historique*, L, 15. To repair bridges was another of their duties. Maitland, Court Baron, 88.

[2] Shirley, Letters, I, 451; Statutes, I, 56; Pl. of Gl., 15; Sel. Pleas, 100; Maitland, Manor. Pleas, pp. xxix, xxx; Bracton's Note Book, III, 424; Maitland, Court Baron, 73, 88; Rot. Hund., II, 29, 308, 313.

[3] There seems to be little doubt that the same jury of the hundred which presented a person also generally tried him. See Pl. of Gl., p. xliii; Palgrave, Commonw., II, 188; Salt Soc., VI, pt. i, 259, 274, 279, *et pass.*

[4] Pl. of Gl., pp. xlii–xliv. For other examples of the *villatæ* used in connection with the petty jury in the trial of persons presented by the *fama publica*, see *ibid.*, 92, 98; Sel. Pleas, 105, 116, 117 (*bis*), 119, 125–127; Bracton's Note Book, II, 115, 116, 634, III, 407; Northumb. Rolls, 94, 101, 104, 115, 121, 123, 350; Palgrave, Commonw., II, 186-188; Salt Soc., IV, 69, 71, VI, pt. i, 259, 269, 274, 279, 283, 284. Some of these cases are preliminary examinations rather than formal trials, which last were dispensed with when there was strong evidence against the accused. Recourse was sometimes had to the jurors of the neighboring hundred or hundreds or counties, instead of the neighboring townships, or to both hundreds and townships combined. See Pl. of Gl., p. xlii; Sel. Pleas, 7, 8, 116, 119; Bracton's Note Book, II, 115.

[5] Four vills are usually referred to, but the numbers three and five are often mentioned in connection with the jury service and the other communal functions of the townships.

and after the abolition of the ordeal (*circa* 1219), for which the petty jury was substituted, the appellee was often tried by a jury instead of wager of battle. When such an appeal was presented by the jurors of the hundred, the neighboring vills were sometimes asked for their testimony, and on this testimony the accused might be declared innocent or guilty.[1] In such appeals and in trials resulting from ordinary presentments by the public voice, the four townships often appear to be regarded as a body distinct from the accusing *juratores* — a body, in fact, which virtually decides the case like the later petty jury.

The neighboring vills were sometimes also employed in connection with the presentment jury in making accusations, and in such cases much weight was attached to their testimony.[2] The *villatæ* were probably not a regular part of either the accusing or the trial jury, but were called upon in certain emergencies to add their knowledge of the facts to that of the *juratores*, seemingly when the latter were in doubt or when the court deemed it expedient that they should be afforced. When such use was made of the vills, their declaration was generally accepted by the court as a decisive verdict. The number of persons from each of the four townships added in this way to the hundred jury is rarely stated in the printed sources, but would naturally be the reeve and four men who usually appeared at the eyre to represent the township.[3]

[1] Pl. of Gl., 29; Sel. Pleas, 66, 103, 106; Palgrave, Commonw., II, 185; Bracton's Note Book, II, 406, 425 (*bis*), 457, III, 471; Salt Soc., VI, pt. i, 259.

[2] Sel. Pleas, 3–5, 26, 117; Northumb. Rolls, 126, 350; Palgrave, Commonw., II, 186; Bracton's Note Book, III, 538; Pl. of Gl., 5, 7, 46, 53, 55, 96, 101; Salt Soc., III, 42, IV, 71; Bracton, II, 537. Most of these cases are clear; but some of them may refer to indictments by vills in the hundred or county courts. The vills made presentments at the eyre in the time of Henry II, according to the Assize of Northampton. Stubbs, Sel. Ch., 151. Maitland describes how the *villatæ* cooperated with the hundred jury in the presentments of the sheriff's tourn. Manor. Pleas, p. xxix.

[3] Rot. Claus., I, 380, 403, 473, 476; Bracton, II, 189; Britton, I, 19; Stubbs, Sel. Ch., 358, and Const. Hist., § 163. According to the Assize of Northampton four from eacn vill made presentments at the eyre. In 1220 eight men from each of four vills decided a suit, but they were specially summoned before the Justices of the King's Bench. Sel. Pleas, 125–127. In 1223, "de qualibet villata sex" were called to Westminster. Bracton's Note Book, III, 471; *cf.* Year Books, 30–31 Edw. I, 76.

This activity of the neighboring *villatæ* in criminal pleas[1] may be largely due to the fact that the townships had already, in most cases, made a careful investigation of the offence in connection with the coroner's inquest, and hence would have more exact knowledge of the facts than the hundred jury. The same four vills that made the preliminary inquiry before the coroner would often participate in the final trial before the justices. In like manner, the coroner himself was sometimes requested by the justices to give evidence,[2] which must often have modified the verdict.

There is another way in which the coroner's inquest may have influenced the growth of the petty jury. From the very nature of the inquiries made at the inquest, we may conjecture that evidence of persons not on the jury was taken. Britton (I, 10) says: "If there is need of further inquiry, and that by others, let inquiry be made again and again." The testimony of the next of kin was secured. The finders, neighbors and companions of the deceased were summoned, and perhaps subjected to cross-examination.[3] The facts so ascertained were entered in the *rotuli coronatoris* for use before the itinerant justices. Thus in the coroner's jury there seems to have been a nearer approach to the determination of truth from the evidence of witnesses than in the early petty jury, whose verdict was based on previous knowledge of facts. The evidence produced at the inquest would generally be known to the representatives of the townships and, when they acted in conjunction with the petty jury, would have weight in the final trial. Hence the coroner's jury may be regarded as one of the links uniting the old system of procedure to the modern custom of deciding matters upon the evidence of witnesses openly examined in court.

One more phase of our subject deserves attention, *i.e.* the

[1] In the printed rolls of the thirteenth century the four vills do not seem to be used on juries in civil suits. For a later example of this, see Year Books, 14 Edw. III, 302.

[2] Pl. of Gl., 11, 98; Bracton's Note Book, II, 117; Northumb. Rolls, 78. *Cf.* above, p. 666, n. 2.

[3] For presentment of Englishry, attachment of finders, *etc.*, see above, p. 662.

influence of this office upon the principle of representation. The coroner's jury, like all other kinds of juries, was itself a representative body, and its frequent use makes it a conspicuous example of early representation for local purposes. The growth of this principle and its extension to Parliament have been fully considered by such writers as Stubbs and Gneist. I wish here to call attention to the mode of the coroner's election and its bearing upon representation. Throughout the thirteenth century it was the custom, as I have already shown, to elect the county coroners in the full shire court "with the assent of the whole county." There were four or two coroners for each county, and they were knights. Here we have an exact counterpart of the earliest parliamentary knights of the shire, who in the reign of Henry III were two or four in number, and were chosen in the county court.[1] The machinery for the election of coroners seems to have been the mould which shaped the representation of the shires in Parliament; the coroners were prototypes of the parliamentary knights of the shire. Elected knights of the shire were also employed for other local purposes,[2] but in a more casual or transitory way than in the case of the coroner. This latter office was a permanent institution, which must have helped to habituate the nation to the idea of county representation.

These remarks concerning the influence of the coroner's office upon the petty jury and upon parliamentary representation are intended merely as suggestions, which may be confirmed or disproved with the publication of new records. At present the material consists of scattered shreds of information difficult to find and to combine. This essay was undertaken mainly in order to show that coroners existed before 1194, and that the study of their early functions is worthy of more attention than it has hitherto received.

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[1] Stubbs, Const. Hist., §§ 159, 214, 216.
[2] Stubbs, Sel. Chart., 161, 259, 299.